

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
EXECUTION APPLICATION NO. 129 of 2012
ARB/CASE/ARB/SVC/R/124/2009**

The Shamrao Vithhal Co-op. Bank Ltd. Decree Holder
Vs.
Apeksha Enterprises & Ors. Judgment Debtor
And
Vijay Warty Third Party Claimant

Ms. Shivangi Chavan i/b. Mr. Vishal Narkar, Advocate for Decree Holder
Mr. Shivam Latoria i/b. M/s. A.P. Steenson & Associates, Advocate for Third Party
Claimant

Before : Mrs. Shonali K. Dighe
Commissioner for Taking Accounts
Date : 6th February, 2023

CALLED FOR DIRECTIONS :

1. Perused Affidavit dated 12th July, 2013 filed by Mr. Vijay Warty, Third Party Claimant. In Paragraph No. 9 of the said Affidavit, the Third Party Claimant states that his legitimate rights in respect of the property are prejudiced as Warrant of Attachment sought to be levied is wrongly levied under false assumption that the Opponent No. 2 is the sole owner of the said residential flat; whereas actually the said property is ancestral property of the Third Party Claimant and the same cannot be attached. Therefore, the Third Party Claimant prays for vacating the said Warrant of Attachment.

2. Affidavit in Rejoinder dated 21st February, 2014 on behalf of Decree Holder is filed by the Officer and Power of Attorney holder of Decree Holder. In Para No. 3 of the said Affidavit in Rejoinder, Decree Holder has submitted that there is no proof produced by the Third Party Claimant to prove ownership of the said Flat No. 5 and to substantiate their contentions that it is ancestral property and who all are the legal heirs etc. of the said property and thus put them to the strict proof thereof. In Para No. 6 of the said Affidavit, Decree Holder has denied contentions made in Paragraph Nos. 9 and 10 of the Third Party Claimant in toto.

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3. In view of the cross submissions of Third Party Claimant and Decree Holder, Decree Holder is directed to produce the title documents of the property which is the subject matter of Warrant of Sale. As per directions given by the Hon'ble Court in Execution Application No. 83 of 2012 by Order dated 26th September 2018, Ld. Advocate for Decree Holder is requested to produce online databases and information regarding the registered charges on the immovable property mentioned in Warrant of Sale, on or before next date.

4. Ld. Advocate appearing for Decree Holder has again revived her request regarding adjourning the matter on the ground that their brief of the present matter is misplaced while shifting their office. On last occasion, Managing Clerk from the office of Advocate for Decree Holder had submitted that he has applied for Certified Copy of proceedings; whereas today it is submitted that the said Managing Clerk has also left the office and now Advocate want to submit fresh Application for issuance of Certified Copy of proceedings. Ld. Advocate for Decree Holder sought for longer date as yet Certified Copy of the misplaced proceedings are not applied by them. She undertakes to apply for Certified Copy of the misplaced proceedings during the course of the day.

5. At the request of Ld. Advocate for Decree Holder, matter is adjourned to 10th March, 2023.

LATER ON

6. Ld. Advocate for Decree Holder appeared and sought for change of adjourned date. At her request, matter is adjourned to 8th March, 2023 instead of 10th March, 2023. Ld. Advocate for Decree Holder is directed to convey the change of date to the Advocate for Third Party Claimant who was present when the matter was called out.

7. Adjourned to 8th March, 2023.